Interagency Acquisition: Proper Use of Non-DoD Contracts

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Objectives

- Background
- Policy
- The Business Decision
- Roles-Responsibilities-Expectations
- Lessons Learned
- Chronology
- Redundancy
- Training Opportunities
- Sharing of Ideas

BACKGROUND

DoD spends billions of dollars annually utilizing non-DoD contracts. This includes:

- Orders issued by a DoD contracting officer (*Direct Acquisitions*)
- Orders issued by a non-DoD contracting officer on behalf of DoD's with DoD funds (*Assisted Acquisitions*)

It is DoD Policy to use non-DoD contracts when it is in the best interest of the Department

Examples of Non-DoD Contracts

- GSA Schedules
- Government-wide Acquisition Contracts (GWACS) (Finite list)
- “GovWorks”, “FedSource”, and Other “Franchise Funds”

Recent Inspector General reviews have found that non-DoD contract vehicles are not always properly used.

"Proper Use of Non-DoD Contracts"

- Joint DoD Policy Memo on "Proper Use of Non-DoD Contracts" Issued October 29, 2004 (January 1, 2005)
  - Agencies and departments must establish a pre-award review process/procedures to ensure that using non-DoD vehicles are in the best interest of the Department of Defense
  - Applicable to acquisition of both services and supplies
  - Applies above the simplified acquisition threshold ($100,000)
  - Provide DoD unique terms and conditions to assisting agencies

The Business Decision

- Using a non-DoD contract to meet DoD requirements is a business decision.
- Consider the following:
  - Does this meet the customer's needs?
    - Quality
    - Delivery
    - Price
  - Is the requirement within scope of the contract to be utilized?
  - Is it cost effective (including fees and discounts)?
  - Are we compliant with competition requirements?
  - Who will perform contract administration-oversight-surveillance?
- Document the decision

DoD Expectations of Requiring Activities

- "Bona fide" need
- Funds utilized must be consistent with appropriation limitations
- Compliance with OSD Policy memo "Proper Use of Interagency Agreements for Non-Department of Defense Contracts Under Authorities Other Than the Economy Act" (March 24, 2005)

DoD Contracting Officers Role "It Depends"

- Business advisor responsibility:
  - Does this meet the customer's needs—quality, delivery, price
  - Are requirements within scope of the intended vehicle?
  - Is it cost effective (including fees and discounts)?
  - Does it meet schedule needs?
  - Who is performing contract administration?
    - Oversight-Surveillance
    - Payment
    - What happens if there are performance issues?
  - Other Considerations
    - Performance Based

DoD Contracting Officers Role (cont.)

- Review contract terms and conditions of assisting agencies' vehicles prior to placing orders (Direct)

- Provide to the assisting agency any unique requirements/terms and conditions associated with the acquisition (Assisted)

DoD Expectations of Assisting Agencies

- If a requirements package is incomplete, contact the Requirements POC Immediately!
- Ensure it's the right vehicle for the right requirement (scope)
- If not, suggest alternatives
- Ask for and incorporate any unique terms and conditions applicable to the order or contract as supplied by DoD
- Comply with DoD competition requirements, specifically when acquiring "services" by ensuring compliance with Section 803 of the 2002 NDAA (receive at least 3 proposals)
- Properly code and capture data in FPDS-NG
- Provide reports/data to customers for analysis (fees)
- Make terms and conditions easily available (i.e. contracts online)
- Set realistic customer expectations
- Charge reasonable fees

DoD Expectations of Contractors

- “With revenue comes responsibility”
- If you are concerned that a task or item ordered is outside the scope of the contract, ask!
- Proper marketing of vehicles and capabilities
- Educate your workforce

DoD Process Expectations

- Compliance with statute, regulation and policy
- Better packages
  - Right requirement (complete, well defined, $1.7B)
  - Right money (ADA)
  - Right contract (scope)
  - Right product or service delivered
  - Right oversight (by whom, at what level)
  - Right feedback and right evaluation
- Right assisting agency

Lessons Learned: DoD Purchases Made Through GSA

- Potential ADA Violations (“NCE”)
  - Bona Fide Need Rule – (majority)
  - Wrong Color of Money – (next most common)
- Other
- Cautions
  - Competition requirements
  - Proper use of funds
  - Security
  - Ethics and Integrity (SECDEF memo Sept. 7, 2005)

RECENT AND RELEVANT

- DPAP Policy Memo on "Use of Federal Supply Schedules and Market Research" (January 2005)
- Interagency Acquisition added to GAO "High-Risk" List (February 2005)
- "Roadshow" training of top Non-DoD contract users (June 2005)
- Community of Practice (COP) established by DAU (DPAP link)
- Site Visits to Assisting Agencies commenced March 2005
  - Interior, Treasury, GSA, NASA
- DoD IG Report on "Interagency Contracting: Problems with DoD's and Interior's Orders to Support Military Operations" (March 2005)
- DoD IG report on "DoD Purchases Made Through GSA" (July 29, 2005)
- DPAP Clarification memo "Proper Use of Non-DoD Contracts" (June 17, 2005)
- USD AT&L Memo to MILDEPS, ODAs, and Field Activities (July 20, 2005)
- SECDEF memo on "Ethics and Integrity" (September 7, 2005)
- DPAP Policy memo on "Interagency Acquisition: A Shared Responsibility" (September 20, 2005)

Redundant-Redundant

- Use of Non-DoD Contracts is “encouraged” when used properly.
- Define Requirements accurately and completely
- Acquisition Planning
- Market Research
- Rules follow the money
  - Competition Friday-Monday
  - Ensure that the supplies or services acquired are consistent with the appropriated funding being used
- Ensure that the transaction complies with internal review procedures established “locally” by Military Departments and Defense Agencies (Army, Navy, AF, etc.) .
- Section 854 2005 NDAA (MILDEPS report of fees paid)
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HOT LINKS

Training and Policy

Defense Acquisition University
http://www.dau.mil/
-Left hand side to continuous learning
-Register for a Continuous Learning class
Course # TBD
# of Continuous Learning Points-TBD

Defense Procurement Acquisition Policy
http://www.acq.osd.mil/dpap/

Back-Up Slide
Bona Fide Need Rule

- What constitutes a *bona fide* need of a particular fiscal year depends on the facts and circumstances of the case.
- Generally, you can't use this years funding to fund next years requirements.
- DoDIG report on DoD Purchases Made Through the General Services Administration (May 2005)

Back-Up Slide: Audit Reports

- Internal GSA IG Reviews
- DoDIG Review of Interior
- DoDIG Review of Franchise Funds
- DoD IG Review of DoD Purchases Made Through GSA
- DoD IG Commenced review of DoD Purchases Through Treasury, NASA and Interior